IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9576 of 2000

with
SPECIAL CIVIL APPLICATION No 9599 of 2000

with
CIVIL APPLICATION No.9432 of 2000

For Approval and Signature:

Hon'ble ACTG. CHIEF JUSICE MR BC PATEL
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI MAGANBHAI CHAVDA

Versus

KADI MUNICIPALITY

Appearance:
MR TUSHAR MEHTA for Petitioner (SCA No.9576/00)
MR RJ OZA for Petitioner (SCA No.9599/00)
Mr.K.A. Puj for respondent no.1.
Mr.A.D. Oza, GOVERNMENT PLEADER for Respondent no.3
Notice served by DS for respondent no.5.

CORAM : ACTG. CHIEF JUSICE MR BC PATEL
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/03/2002

COMMON C.A.V.JUDGEMENT (Per : MR.JUSTICE RAVI R.TRIPATHI)

Rule in S.C.A. No.9576/00. Service of rule is waived by the advocates appearing for the respective respondents. At the joint request of the learned advocates, these matters are taken up for final hearing and disposed of accordingly.

1. Special Civil Application No.9576/2000 is filed by one Shri Rameshbhai M.Chavda, who is an elected Councillor of Kadi Municipality. The petitioner has set out in para 1 of the petition that he is also an active social worker and he has been taking up several public causes with various authorities. It is also stated that the petitioner is a law abiding citizen and is genuinely interested iAn espousing the public causes as a part of his duties as an elected representative of the residents of Kadi Municipality. The petitioner has filed this petition as a public interest litigation to bring to the notice of the Court a glaring example and shocking facts of respondents flouting the orders passed by this Court by which they were directed to remove the illegal construction. The petitioner has, therefore, approached this Court not only for writ of mandamus directing the respondents to demolish the shopping centre which was directed by order dated 20.1.1998 passed in Special Civil Application No.7109 of 1996, copy of which is produced at Annexure "A" , but has also prayed for appropriate writ, order or direction directing the concerned respondents to take action under the Gujarat Municipalities Act, 1963 against the erring respondents, i.e. Kadi Municipality and Shri Laljibhai Nanjibhai Patel, President of Kadi Municipality for deliberately and willfully not complying with the directions issued by this Court whereby they were directed to remove the unauthorised construction. The petitioner has also prayed for appropriate writ, order or direction directing the respondent No.5 (a) Secretary, R & B Department, Govt. of Gujarat to take appropriate disciplinary (punitive) action against the Executive Engineer, R & B, Mehsana who is ultimately responsible for not complying with the directions issued by this Court in Special Civil Application No.7109/96 dated 20.1.1998.

2. The facts giving rise to the present proceedings are not required to be stated in detail for the sake of brevity. The facts are set out in Special Civil Applications No.9576 of 2000 and 9599 of 2000.

3. However, some facts are reproduced to have an [idea of the background in which the present order is passed. It is required to be noted that a Special Civil

Application No.10258 of 1998 was filed by 41 persons who were required to be evicted, but no interim protection was granted by this Court and still the authorities did not take any step to carry out the directions issued by this Court. The said Special Civil Application was withdrawn unconditionally in the month of April 2000.

4. Thereafter, notice dated 11.7.2000, a copy of which is produced at Annexure 'D' to the petition was issued by the petitioner. It was replied by the office of the Collector vide letter dated 1.8.2000 saying that Collector's office has intimated the Executive Engineer, Mehsana to take possession of the property. The respondent No.1-Municipality having learnt about the same i.e. the communication from the Collector's office to the Executive Engineer issued the notice to the occupants which, according to the petitioner, is only with a view to give them a cause of action to approach the Court of law to an order against any attempt made by the Executive Engineer, Mehsana to implement the order of this Honourable Court. The averments made by the petitioners is not a mere guess work inasmuch as in the other petition, i.e. Special Civil Application No.9599 of 2000, these notices are made subject matter of challenge and the reliefs sought for in that petition are as under:

> "Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned notice dated 28.3.2000 annexure "A" and alike notices being issued to each petitioner by the respondent No.2 and further be pleased to restrain the respondents, their officers, servants, agents or any other person from acting upon such notice or taking any action with respect of demolition of the cabins of the petitioners situated on the road abetting Kadi-Detroj road in any manner".

The petition is contested by Kadi Municipality by filing an affidavit in reply sworn by one Shri Ashwinbhai B.Bhatt, Chief Officer of Kadi Municipality.

5. During the course of hearing it was put to the learned advocates appearing for Kadi Nagarpalika, the Government and those 41 occupiers who are the petitioners in Special Civil Application No.9599/2000, to show as to under which provision of law the condition no.4 of the order by which the portion of the road (Kadi-Detroj) was handed over to Kadi Nagarpalika could have been deleted, but they were not in a position to show any provision of

law under which said condition could have been deleted. These advocates were also not able to reply as to under what provision of law the land acquired for the public purpose could be put to any other use. As a matter of shock and also surprise that the authorities without there being any basis in law have acted in a manner which shows that they have no respect for the law or the orders of the Court and have rest contented for themselves that by deleting condition no.4 now the directions issued by this Court by its order dated 20.1.1998 in Special Civil Application No.7109 of 1996 are not required to be complied with.

6. The deponent, i.e. the Chief Officer of Kadi Municipality has also put forward an excuse of filing of Special Civil Application No.10258/98 in the month of November, 1998 and grant of status quo order by this court on 2.12.1998 which, according to the deponent, was extended from time to time and ultimately the petition came to be disposed of as withdrawn on 23.3.1999 in view of the affidavits filed by the State Government as well as respondent No.1-Kadi Municipality. The deponent further proceeds to state that it is in this background that the respondent No.1-Kadi Municipality could not take any action with regard to the demolition of the shops as directed by this Court. The deponent has referred to the order of status quo passed in Special Civil Application No.10258/98 till the matter came to be disposed of as withdrawn and also filing of fresh petition being Special Civil Application No.9599/2000 by the shop owners which came to be admitted by the learned single judge on 21.9.2000. It will be proper to refer to the order passed by the learned single judge on 21.9.2000, whereby the learned single judge did not pass any order of interim relief on the ground that the learned counsel for the petitioners submitted that he will make appropriate representation to the State Government and to the Kadi Municipality for continuing in possession. The said order reads as under:

> "Heard the learned counsel Mr.R.J.Oza for the petitioners. Issue Rule returnable on 5.10.2000. Learned counsel for the respondent State waives service of Rule.
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> As regards interim prayer, learned counsel for the petitioners submitted that he will make appropriate representation to the State Government and the Municipality for continuing in possession, and therefore, at this stage, I am not passing any order of interim relief.

> Mr.B.P.Tanna, learned counsel appearing on behalf of Municipal Councillor submitted that a Public Interest Litigation (PIL) has been filed and the Division Bench has passed an order for placing that matter before the Honourable The Chief Justice for appropriate orders regarding hearing of both the petitions. The office may place this matter along with the PIL before the Honourable The Chief Justice as per the order passed by the Division Bench in PIL".

The deponent has denied the allegation made by the petitioner that the majority of the shop owners are either leaders of BJP or its affiliated organisations and/ or relatives and supporters of said persons.

7. Learned Advocate appearing for the petitioner relied upon a judgment of this court in the matter AHMEDABAD VICTORIYA IRON WORKS vs STATE OF GUJARAT & ORS reported in 1997(1) GLR 556 to which one of us (B.C.Patel,J) was party. Mr.Mehta relying upon the said judgment contended that in view of the provisions of Section 17A of the Land Acquisition Act, 1894 (as amended by Gujarat Act) if the land is acquired for one public purpose it can not be used for any other public purpose without the sanction of the State Government. Mr.Mehta submitted that in the present case once the land in question is acquired for the purpose of widening of Kadi-Detroj road, and the same was entrusted to Kadi Nagarpalika for proper maintenance, then it was not open to the Kadi-Nagarpalika to put to use the said land for any other public purpose without the sanction of the State Government. Mr.Mehta also submitted that it was not within the competence of Kadi Nagarpalika to pass resolution being Resolution Nos 136 and 11 which is referred to in para 2 of the affidavit-in-reply and to put up construction of shopping centre on the land in question and/ or to allot land in question to 41 persons after taking money from them even if they were having licences under Shops and Establishments Act earlier to their eviction as they were occupying the portion of land which was acquired and had taken all objections as to the acquisition proceedings.

8. Mr.Mehta also relied on a judgment of the Honourable Apex Court in the matter of TULSI COOPERATIVE HOUSING SOCIETY, HYDERABAD vs STATE OF ANDHRA PRADESH & ORS reported in 1999 AIR SCW 3693 and submitted that in the said case the Honourable Supreme Court had held that as the lands were acquired for housing projects, the said lands have to be utilised for the purpose for which they

were acquired. The Honourable Supreme Court had directed the Government to nominate a suitable Committee comprising of at least three Secretaries to the Government for the purpose of carrying out the objects of the acquisition in an appropriate manner. Mr.Mehta invited the attention of this Court to para 19 of the judgment which reads as under:

> "..... Once we uphold the validity of the proceedings for acquisition under the Acquisition Act, it has to follow that the lands have to be utilised for the purpose for which they were acquired. We would set aside direction No.1 contained in the penultimate para of the judgment of the High Court and substitute with a direction that the lands acquired under the Acquisition Act should be properly utilised by the Government in order to achieve the purpose for which they were acquired. The Government may nominate a suitable Committee comprising at least three Secretaries to the Government for the purpose of carrying out the objects of the acquisition in an appropriate manner" (emphasis supplied)

9. Mr.Mehta, learned advocate for the petitioner relied on para 5 of the judgement in the case of Ahmedabad Victoriya, 1997 (1) GLR 556 (supra) which reads as under:

> "If the land acquired for a particular public purpose, then in absence of previous sanction as per Sec.17A of the Act as applicable to the State of Gujarat it is not possible to use the same land for other public purpose. Sec.17A has been inserted vide Gujarat Act 20 of 1965 which reads as under:
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> '17.A Use of land for any public purpose permitted:- When any land vests in the State Government or in a Corporation owned or controlled by the State Government under the provisions of this Act, it shall be lawful with the previous sanction of the State Govt, to use such land also for any public purpose other than that for which its possession was taken.'
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> Thus, reading the section 17A it is very clear that without previous sanction of the State

Government, the land could not have been used for any other public purpose than for which its possession was acquired. There is no dispute before us that the piece of land was acquired for widening the road which is a public purpose.

The Estate Management Committee, Standing Committee or the General Board or respondent-Corporation has not considered the fact that occupants were requesting for regularising their occupancy on the land which in fact did not belong to Corporation and that was acquired for widening the road. By regularising, the Corporation has not acted in accordance with law".

10. Learned Chief Justice Shridharan and Mr.Justice Shah on 20.1.1998 allowed the Special Civil Application No.7109 of 1998 and after hearing the parties held that the land in question was acquired in accordance with law and after taking possession, entrusted the same to Kadi Nagarpalika for the purpose of maintenance of Road. However, Nagarpalika acted illegally, after taking money from 41 persons, allowed them to put up structures/ shops illegally and without sanction of law. Induction of 41 persons on land acquired by State for widening Kadi-Detroj Road being illegal, the Division bench directed Kadi Nagarpalika to remove the construction put up and to hand over the land to Executive Engineer, R&B, Mehsana at the earliest and at any rate within one month from the receipt of the judgement. The Executive Engineer, R&B was also asked to remove the structure/ shops in case of failure of Kadi Nagarpalika.

11. These unauthorised occupants despite the orders have been successful in violating the order passed by the Court and probably with the blessing of the State Govt. and Nagarpalika.

12. Look at the waste of public exchequer-- land acquired before 1993 for widening the road for Public Safety. Acquisition proceeding were challenged before this Court by filing Special Civil Applications No.5448/ 93, and 5678 of 1993 to 5805 of 1993, the petitions were dismissed and hence Letters Patent Appeals were filed and after dismissal the State took possession of the land and Nagarpalika was entrusted for maintenance of road.

13. This Nagarpalika, through its councillors acting contrary to law instead of maintaining the width of the road, raise funds for shopping centre and helped 41

persons. These were the unsuccessful petitioners and appellants in acquisition proceedings referred hereinabove.

14. Division Bench pointed out that in view of development, people were facing traffic problems. Public safety is to be given importance and keeping that in mind, Court passed order earlier. Court pointed out development of GIDC Estate, oil mills, schools, etc. By now in view of fast development, it is proper to presume that today widening of road is all the more necessary as there may not be any space now. Despite this, without any authority, contrary to law, letter Annexure 'A' dated 7.4.1998 was obtained from the office of Deputy Secretary, Road & Building, Gandhinagar. Neither Deputy Secretary nor the Secretary, Road & Buildings Department filed an affidavit supporting the contents of that letter. It is not a gazetted notification. If the Municipality wants to place reliance on such letter either it should get produced original of that or should have filed the affidavit of the concerned Secretary. The State Govt. has not filed any affidavit though it is a party respondent. A copy of letter, Annexure 'A' dated 7.4.1998 is inter departmental correspondence, not addressed to Kadi Municipality is produced by Kadi Municipality stating that it is a notification. Similarly, for a letter at Annexure 'B' dated 9.12.1998, neither the author of the letter nor the Secretary has testified the contents of the letter on oath. The State has neither supported Annexure 'A' nor Annexure 'B'. In fact, the State has not filed any affidavit in support of the contentions raised by Kadi Nagarpalika. In absence of affidavit by State, no reliance can be placed.

15. On behalf of Kadi Nagarpalika, source of letter is not stated. These two letters are not coming from proper custody. In absence of original letters or authenticated copies/ true copy, no reliance can be placed. It was for the respondent, Nagarpalika, to follow the procedure for getting the original letters (original or authenticated) produced before the Court. In affidavit, the deponent has not stated about the source of the letter or having an occasion to go through that letter. Therefore, no reliance can be placed on such letters.

16. Special Civil Application No.9599/2000 is filed challenging the notice issued by the Kadi Municipality dated 22.8.2000 whereby the petitioners of that petition are asked to remove the construction of their respective cabins within 7 days failing which the demolition/removal

of the petitioners' cabins is to take place at the cost of the petitioners.

17. In view of the fact that the land in question was acquired for the purpose of widening of Kadi-Detroj road, and in view of the fact that the land once acquired for a particular purpose can not be put to use for any other public purpose, without the previous sanction of the State Government, and in view of the fact that the learned advocates appearing for Kadi Municipality or for the State Government are not in a position to show the power under which the condition No.4 could have been deleted, no reliefs can be granted to the petitioners of Special Civil Application No.9599/2000. On the other hand, the Special Civil Application No.9576/2000 is required to be allowed to an extent and the reliefs as prayed for are required to be granted as indicated below.

18. The Special Civil Application No.9576/2000 is partly allowed and Kadi Municipality is hereby directed to comply with the directions issued by this Court in Special Civil Application No.7109/96 by order dated 20.1.1998. So far as the prayer for directing the respondents to take action under Gujarat Municipalities Act, 1963 against the respondent Nos 1 & 2 for deliberately and willfully not complying with the directions issued by this Honourable Court is concerned, the same is not granted for the reason that the respondent No.1-Kadi Municipality is functioning through its officers, namely, Chief Officer and the elected President from time to time and therefore it will not be proper at this stage to direct the authorities to take action against the present Chief Officer and the present President of Kadi Municipality. The said prayer will be considered if the directions issued by this court are not complied with within the stipulated period in the said order hereafter. Rule is made absolute to aforesaid extent only with no order as to costs.

19. In view of the order passed in Special Civil Application No.9576/2000 the Special Civil Application No.9599/2000 is dismissed. Rule is discharged with no order as to costs.

20. So far as Civil Application No.9432/2000 is concerned, the contentions raised in the said Civil Application are taken into consideration and in view of the order passed in the main petition no order is passed in this Civil Application. It stands disposed of accordingly.

(B.C. Patel, J.)

(Ravi R. Tripathi, J.)

FURTHER ORDER DATED 13.3.2002.

At this stage, learned advocate Mr.R.J. Oza requested for staying the operation and implementation of this judgement for a period of four weeks. In view of the fact that the directions are of the Honourable Supreme Court, there is no question of granting any stay of this judgement and order. The request is rejected.

(B.C. Patel, Actg. C.J.)

(Ravi R. Tripathi, J.)

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